

AN ACT
RELATING TO THE ENVIRONMENT; AMENDING THE AIR QUALITY
CONTROL ACT TO PROVIDE DEADLINES FOR PERMIT APPLICATION
ACTION; PROVIDING FOR ACCELERATED REVIEW OF APPLICATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 74-2-7 NMSA 1978 (being Laws 1972, Chapter 51, Section 4, as amended) is amended to read:

"74-2-7. PERMITS--PERMIT APPEALS TO THE ENVIRONMENTAL IMPROVEMENT BOARD OR THE LOCAL BOARD--PERMIT FEES.--

A. By rule, the environmental improvement board or the local board shall require:

(1) any person intending to construct or modify any source, except as otherwise specifically provided by rule, to obtain a construction permit from the department or the local agency prior to such construction or modification; and

(2) any person intending to operate any source for which an operating permit is required by the 1990 amendments to the federal act, except as otherwise specifically provided by rule, to obtain an operating permit from the department or the local agency.

B. Rules adopted by the environmental improvement board or the local board shall include at least the following provisions:

(1) requirements for the submission of relevant information, including but not limited to information the department or the local agency deems necessary to ensure that rules and standards under the Air Quality Control Act or the federal act will not be violated;

(2) a description of the elements required for the department or local agency to deem an application complete;

(3) specification of the deadlines for processing permit applications; provided the deadline for a final decision by the department or the local agency on a construction permit application may not exceed:

(a) ninety days after the application is determined to be complete if the application is not affected by requirements for prevention of significant deterioration unless the secretary or the director grants an extension not to exceed ninety days for good cause, including the need to have public hearings; or

(b) two hundred forty days after the application is determined to be complete if the application is affected by requirements for prevention of significant deterioration;

(4) that if the department or local agency fails to take final action on a construction permit application within the deadlines specified in Paragraph (3) of this subsection, the department or local agency shall notify the applicant in writing that an extension of time is required to process the application and specify in detail the grounds for the extension;

(5) specification of the public notice, comment period and public hearing, if any, required prior to the issuance of a permit; provided the permit regulations adopted:

(a) by the environmental improvement board shall include provisions governing notice to nearby

states; and

(b) by any local board shall include provisions requiring that notice be given to the department of all permit applications by any source that emits, or has a potential emission rate of, one hundred tons per year or more of any regulated air contaminant, including any source of fugitive emissions of each regulated air contaminant, at least sixty days prior to the date on which construction or major modification is to commence;

(6) a schedule of construction permit fees sufficient to cover:

(a) the reasonable costs of reviewing and acting upon any application for such permit; and

(b) the reasonable costs of implementing and enforcing the terms and conditions of the permit, excluding any court costs or other costs associated with an enforcement action;

(7) a schedule of emission fees consistent with the provisions of Section 502(b)(3) of the 1990 amendments to the federal act;

(8) a method for accelerated permit processing that may be requested at the sole discretion of the applicant at the time the applicant submits a construction permit application and that:

(a) allows the department or local agency to contract with qualified outside firms to assist the department or local agency in its accelerated review of the construction permit application provided that the department or local agency can contract with a qualified firm that does not have a conflict of interest;

(b) establishes a process for the department or local agency to account for the expenditure of the accelerated permit processing fees; and

(c) allows for additional permit application fees sufficient to cover the reasonable costs of an accelerated permit application review process; provided that before the application is complete, the department or local agency shall give the applicant a reasonable estimate of costs of an accelerated permit applicant review process;

(9) specification of the maximum length of time for which a permit shall be valid; provided that for an operating permit, such period may not exceed five years; and

(10) for an operating permit only:

(a) provisions consistent with Sections 502(b) and 505(b) of the federal act providing: 1) notice to and review and comment by the United States environmental protection agency; and 2) that if the department or local agency receives notice of objection from the United States environmental protection agency before the operating permit is issued, the department or the local agency shall not issue the permit unless it is revised and issued under Section 505(c) of the federal act;

(b) provisions governing renewal of the operating permit; and

(c) specification of the conditions under which the operating permit may be terminated, modified or revoked and reissued prior to the expiration of the term of the operating permit.

C. The department or the local agency may deny any application for:

(1) a construction permit if it appears that the construction or modification will not meet applicable requirements of the Air Quality Control Act, the federal act or any rule adopted pursuant to either; or

(2) an operating permit if:

(a) the source for which the permit is sought will emit a hazardous air pollutant or any air contaminant in excess of a federal standard of performance or a rule of the environmental improvement board or the local board;

(b) it appears that the source for which the permit is sought will cause or contribute to air contaminant levels in excess of any national or state standard or, within the boundaries of a local authority, applicable local ambient air quality standards; or

(c) any other provision of the Air Quality Control Act or the federal act will be violated.

D. The department or the local agency may specify conditions to any permit granted under this section, including:

(1) for a construction permit, a requirement that such source install and operate control technology, determined on a case-by-case basis, sufficient to meet the requirements of the Air Quality Control Act, the federal act and rules promulgated pursuant to either; and

(2) for an operating permit:

(a) imposition of individual emission limits, determined on a case-by-case basis, but only as restrictive as necessary to meet the requirements of the Air Quality Control Act and the federal act or the emission rate

specified in the operating permit application, whichever is more stringent;

(b) compliance with applicable federal standards of performance;

(c) imposition of reasonable restrictions and limitations not relating to emission limits or emission rates; or

(d) any combination of the conditions listed above.

E. This section does not authorize the department or the local agency to require the use of machinery, devices or equipment from a particular manufacturer if the federal standards of performance, state rules and permit conditions may be met by machinery, devices or equipment otherwise available.

F. The issuance of a permit does not relieve any person from the responsibility of complying with the provisions of the Air Quality Control Act and any applicable rules of the environmental improvement board or the local board. Any conditions placed upon a permit by the department or the local agency shall be enforceable to the same extent as a rule of its board.

G. Any person who participated in a permitting action before the department or the local agency shall be notified by the department or the local agency of the action taken and the reasons for the action. Notification of the applicant shall be by certified mail.

H. Any person who participated in a permitting action before the department or the local agency and who is adversely affected by such permitting action may file a

petition for hearing before the environmental improvement board or the local board. The petition shall be made in writing to the environmental improvement board or the local board within thirty days from the date notice is given of the department's or the local agency's action. Unless a timely request for hearing is made, the decision of the department or the local agency shall be final.

I. If a timely petition for hearing is made, the environmental improvement board or the local board shall hold a hearing within ninety days after receipt of the petition. The environmental improvement board or the local board shall notify the petitioner and the applicant or permittee, if other than the petitioner, by certified mail of the date, time and place of the hearing. If the subject of the petition is a permitting action deemed by the environmental improvement board or the local board to substantially affect the public interest, the environmental improvement board or the local board shall ensure that the public receives notice of the date, time and place of the hearing. The public in such circumstances shall also be given a reasonable opportunity to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. Any person submitting data, views or arguments orally or in writing shall be subject to examination at the hearing.

J. The environmental improvement board or the local board may designate a hearing officer to take evidence in the hearing. All hearings shall be recorded.

K. The burden of proof shall be upon the petitioner. Based upon the evidence presented at the

hearing, the environmental improvement board or the local board shall sustain, modify or reverse the action of the department or the local agency respectively.

L. Notwithstanding any other provision of law and subject to the provisions of Section 74-2-4 NMSA 1978, a final decision on a permit by the department, the environmental improvement board, the local agency, the local board or the court of appeals that a new source will or will not meet applicable local, state and federal air pollution standards and rules shall be conclusive and is binding on every other state agency and as an issue before any other state agency shall be deemed resolved in accordance with that final decision.

M. Subject to the provisions of Section 74-2-4 NMSA 1978, if the local board has adopted a permit rule pursuant to this section, persons constructing or modifying any new source within the boundaries of the local authority shall obtain a permit from the local agency and not from the department.

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N. Fees collected pursuant to this section shall be deposited in:

(1) the state air quality permit fund created by Section 74-2-15 NMSA 1978 if collected by the department; or

(2) a fund created pursuant to Section 74-2-16 NMSA 1978 if collected by a local agency pursuant to a permit rule adopted by the local board pursuant to this section."
